

MEMORANDUM OF LAW

DATE: October 2, 1985

TO: Councilman Uvaldo Martinez

FROM: City Attorney

SUBJECT: Contribution and Expenditures for a Legal
Defense Fund

By memorandum of September 20, 1985 and by a private letter from your attorney on September 23, 1985, you describe the pending investigation arising from the credit card controversy and ask:

- a) Does the Campaign Control Ordinance limit the raising of money for a legal defense fund?
- b) May Don Harrison donate his public relations services?
- c) If Mr. Harrison donates his services or is employed, does this pose any conflict of interest problems?

d) May William E. Grauer be paid a retainer fee from
your existing campaign fund?

These questions are answered seriatim with the accompanying
analysis supporting each.

a. Legal Defense Fund

On February 25, 1985 this office concluded in a fifteen (15)
page letter to Leo Sullivan, Esq. (copy attached) that the San
Diego Municipal Election Campaign Control Ordinance does apply to
limit contributions to a legal defense fund. That opinion was
tested in *Hedgecock v. City of San Diego, et al.*, Superior Court
No. 536672, which resulted in a ruling that donations to a legal
defense fund are "contributions" within the meaning of the
ordinance, but the limitations of the ordinance do not apply "for
attorney fees and related litigation expenses" to the extent that
all funds are properly reported.

We are unpersuaded by the basis for this ruling and are
actively conducting an appeal. Secondly, our original ruling
received considerable support in the recent case of *Thirteen
Committee v. Weinreb*, 168 Cal.App.3d 528 (1985) which confirmed
that contributions to a legal defense fund must be reported under
the Political Reform Act.

Although the guidelines exempt payments made

for personal purposes "unrelated to his candidacy" (Cal. Admin. Code, tit. 2, section 18225, subd. (b)(1)), the Commission has officially interpreted the proviso to include litigation expenses of a candidate seeking to remove an opponent from the ballot as a reportable expenditure noting, in part, that "when expenditures are made during the course of a campaign for litigation designed to protect or vindicate the personal reputation of a candidate, those expenditures generally are made to forward the fortunes of the candidate in the election and should also be reported." (In re Request of Buchanan (1979) 5 Ops.Cal.Fair Political Practices Com. 14, 16.) Such official interpretation of governing statutes and regulations is entitled to deference by the courts. (Judson Steel Corp. v. Workers' Comp. Appeals Bd. (1978) 22 Cal.3d 658, 668 ¶150 Cal.Rptr. 250, 586 P.2d 564σ.) Weinreb, *supra* at 533.

While the San Diego Municipal Campaign Control Ordinance

places no limit on expenditures, its definition of "contribution" (San Diego Municipal Code section 27.2903 (e)) is nearly, identical with the definition of "contribution" in the Political Reform Act (California Government Code section 82015). Hence Weinreb's sanctioning of both administrative regulations and the Commission's construction support our original conclusion which draws heavily on Commission opinions, principally FPPC Private Advice Letter to Gerald A. Sperry, October 18, 1984 (A-84-236).

Moreover we note that the Weinreb court was totally unpersuaded by the argument that reporting obligations ceased with the election.

Additionally, section 82007 broadly defines "candidate" as any person seeking nomination

or election whether the specific elective office is known. The trial court found that Weinreb was a candidate; and the evidence established that Weinreb eventually sought another elective term as mayor. Thus, she remained a "candidate" under a duty to report her expenditures, including legal expenses incurred and paid in prosecuting the defamation lawsuit.

Weinreb, *supra* at 536.

Under the strength of these two holdings, then, the Campaign Control Ordinance does apply to a legal defense fund. The limitation provisions are intact with regard to donations raised for "media contact and public relations" since under the Hedgecock ruling neither of these are "attorney fees or related litigation expenses." A fund to pay the attorney fees of Mr. Grauer presents a more difficult problem. Both Hedgecock and Weinreb hold that donations to such a fund are "contributions," but the former holds no limitations apply where they are properly reported and used only for the litigation.

b) Donation of Services

The San Diego Campaign Control Ordinance specifically excludes "volunteer personal services" from the definition of contributions. San Diego Municipal Code section 27.2903(e). Hence Mr. Harrison or Mr. Grauer may volunteer their services without violating the limitation provision of the ordinance.

c) Conflict of Interest

The conflict of interest provisions both in California law and municipal restrictions are too numerous to review in a vacuum. Since Mr. Harrison is retained "privately," the only conflict to be concerned about would be your public actions if and when they have the potential of benefiting you, Mr. Harrison

or one of his clients. See generally Council Policy No. 000-4.

We stand ready to review any concrete factual situation as it arises and advise you accordingly.

d) Use of Existing Campaign Funds

We understand that a sum of money exists from your last campaign and which is contemplated as a source of payment of William E. Grauer, Esq. The general rule is that campaign funds cannot be used for personal use. California Elections Code section 12401. The use of campaign funds may, however, be used for professional fees where you can substantiate a political, legislative or governmental purpose.

12402. Expenditures considered personal use.

The following expenditures shall be considered the personal use of campaign funds, and shall not be made, unless there is a reasonable relationship to political, legislative, or governmental purposes:

(a) Payments for professional services or personal debts, including, but not limited to, personal income taxes and settlements of civil actions, and related attorneys fees.

California Elections Code section 12402.

Certainly retaining and utilizing the professional services of Mr. Grauer can be seen to have a political purpose where the Councilman's political reputation and, perhaps, political office is threatened. Thus although not clear, we believe the use of campaign funds to pay Mr. Grauer would be proper.

JOHN W. WITT, City Attorney

By

Ted Bromfield

Chief Deputy City Attorney

TB:js:011(x043.2)

Attachment

ML-85-66